

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 08-E-0053

**In the Matter of the Liquidation of
Noble Trust Company**

**LIQUIDATOR'S CONSENTED-TO MOTION TO APPROVE
NOTICE AND OBJECTION PROCEDURES FOR HEARING ON
APPROVAL OF LIQUIDATOR'S PLAN OF LIQUIDATION
AND APPROVAL OF CLAIMS PROCEDURES MOTION**

Glenn A. Perlow, Bank Commissioner for the State of New Hampshire, in his capacity as Liquidator of Noble Trust Company (the "Liquidator" and "Noble Trust," respectively), by his attorneys, the Office of the Attorney General and Sheehan Phinney Bass + Green, Professional Association, moves for the entry of an order: (1) approving the method, manner and form of notice to be given of the hearing to consider approval of the Liquidator's Plan of Liquidation (the "Plan") and approval of the Liquidator's Motion for Approval of Claims Resolution Procedures (the "Claims Procedures Motion") that the Liquidator intends to file on or before August 7, 2014; (2) scheduling a hearing on the proposed Plan and Claims Procedures Motion; and (3) establishing a deadline by which any objections to the Plan and Claims Procedures Motion must be filed and served. Determination of this Motion without a hearing is appropriate because of the procedural nature of the relief requested (which is substantially similar to notice procedures previously approved by this Court in similar contexts in this proceeding), and because the approval of such notice procedures will enable the Liquidator to promptly seek approval of the Plan and approval of the Claims Procedures Motion. In support of this Motion, the Liquidator states as follows:

1. Since early in this proceeding, the Liquidator has engaged in negotiations with numerous parties to resolve various disputes concerning assets of the liquidation estate. The negotiations have proven successful, resulting in settlement agreements that have been approved by this Court and, in turn, the collection by the Liquidator of settlement sums for future distributions on account of allowed claims. Prior to making any distributions, however, the Liquidator must obtain approval of the proposed Plan and of the Claims Procedures Motion. In accordance with this Court's order, the Liquidator anticipates filing the Plan and Claims Procedures Motion on or before August 7, 2014.

2. Due process requires the Liquidator to give notice of the hearing on the approval of the Plan and of the Claims Procedures Motion to all parties who, to the best of the Liquidator's knowledge, may have interests affected by the Plan and the Claims Procedures Motion. With the approval of prior settlements, the Liquidator has sought and received a determination by this Court as to the adequacy of both the method and the manner of notice which the Liquidator proposes to be given to parties concerning settlement agreements, the hearings on their approval, and the procedures by which objections (if any) shall be filed and heard. With this Motion, the Liquidator seeks a similar determination and proposes the following notice procedures for the hearing on the approval of the Plan and the Claims Procedures Motion.

3. In addition to serving all counsel who have filed appearances in this proceeding, the Liquidator proposes to serve a copy of a notice of hearing, substantially in the form attached hereto as Exhibit A (the "Notice of Hearing"), the Plan, the Claims Procedures Motion, the Liquidator's Memorandum in Support of the Plan and Claims Procedures Motion (the "Memorandum"), the Affidavit of Robert A. Fleury In Support of Liquidator's Memorandum in

Support of the Plan and Claims Procedures Motion (the “Fleury Affidavit”), and any other supporting affidavits via regular mail, upon (a) all parties who have filed proofs of claim in the Liquidation Proceeding or their assignee if known to the Liquidator; (b) all attorneys or other representatives who are not of record but who have identified themselves to the Liquidator in writing as representing a person or entity claiming an interest in the Liquidation Estate; and (c) all parties whose names are otherwise known to the Liquidator and not already described above, at their most recent address as shown in the books and records of Noble Trust in the Liquidator’s possession or subsequently updated address that has been made known to the Liquidator, unless the Liquidator has knowledge that such address is no longer valid. In the event that the proposed service would result in multiple packages being served in the same manner to the same address, the Liquidator requests that service of a single package be sufficient for notice purposes. To the extent that a party is a non-resident of this state, notice will be provided in accordance with the long-arm statute, RSA 510:4. That is, the Notice of Hearing, the Plan, the Claims Procedures Motion, the Memorandum, the Fleury Affidavit, and any other supporting affidavits will first be served upon the New Hampshire Secretary of State, and then served by certified mail, return receipt requested, to the party's last known abode or place of business.

4. Finally, upon filing, copies of the Notice of Hearing, the Plan, the Claims Procedures Motion, the Memorandum, the Fleury Affidavit and any other affidavits in support of the Plan and Claims Procedures Motion will be made available for review at the Office of the Clerk, Merrimack County Superior Court, 163 North Main Street, Concord, New Hampshire, 03302, or may be obtained upon request of The Office of Noble Liquidation, Attn: Abigail Shaine (Tel.: (603) 625-6733), or viewed on the New Hampshire Banking Department’s web site (www.nh.gov/banking/noble-trust/).

5. In light of the comprehensive notice procedures set forth herein, *i.e.*, physical mailing, posting of the Plan, the Claims Procedures Motion, the Memorandum, the Fleury Affidavit and any other affidavits in support of the Plan and Claims Procedures Motion on the Banking Department's website, and availability of the pleadings at the Court or by request of the Liquidator, the Liquidator submits that service in this manner is reasonably calculated to reach those parties who might conceivably have an interest in the outcome of the Plan and Claims Procedures Motion and is thus compliant with standards of due process. Service shall be complete when the Liquidator makes a certificate of service to the Court certifying that he has complied with the notice procedures set forth herein. RSA 510:8.

6. The Liquidator proposes that the Court set a deadline for the filing of any objections to the Plan and Claims Procedures Motion and that a hearing be scheduled to consider the approval of the Plan and the Claims Procedures Motion. In order to ensure due process by providing an adequate opportunity to object with a minimum of two weeks between the service of the Plan and Claims Procedures Motion and the proposed objection deadline, the Liquidator proposes that the Court set the objection deadline as September 10, 2014 at 4:00 p.m.¹ The Liquidator proposes that objections be required to be filed with the Clerk of this Court and served upon the Liquidator's counsel and other counsel of record so that they are actually received by all of the foregoing parties on or before the objection deadline; *i.e.* any objections filed with the Court must also be either hand delivered to counsel or, if served by mail, then also transmitted electronically to counsel that same day. The Liquidator proposes that a hearing be scheduled to consider the approval of the Plan and Claims Procedures Motion on October 7, 2014. The hearing will be non-evidentiary and parties will not have discovery prior thereto.

¹ The Liquidator shall complete the service set forth herein on or before August 20, 2014 (21 days in advance of the proposed objection deadline). A certificate of service certifying such service will be filed by the Liquidator.

7. The procedures proposed above are substantially similar to those that have previously been approved by this Court, and are in accord with generally accepted principles of New Hampshire law. Thus, the Liquidator believes that the notice procedures described herein comply in all respects with the notice and due process requirements of applicable law, and should be deemed sufficient to provide adequate notice of the hearing on the Plan and Claims Procedures Motion, the issues to be decided at the hearing, and the deadline for filing objections to all parties in interest. *Mullane v. Central Hanover Bank & Tr. Co.*, 339 U.S. 306 (1950); *In re Hiscoe*, 147 N.H. 223, 227 (2001)(“[A]dequate notice is that which is reasonably calculated to give the parties actual notice of the issue or issues to be decided at the hearing. . . . Due process, however, does not require perfect notice, but only ‘notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.’”(internal citations omitted)).

8. Pursuant to Superior Court Rule 11(c), the Liquidator hereby certifies that all parties that have filed an appearance in the Liquidation Proceeding assent to or represented that they do not oppose the relief requested in this Motion. Accordingly, the Liquidator submits that determination of this Motion without a hearing is appropriate because of the procedural nature of the relief requested (which is substantially similar to notice procedures previously approved by this Court in similar contexts in this proceeding), and that the approval of such notice procedures will enable the Liquidator to promptly seek approval of the Plan and the Claims Procedures Motion. As a result, no party will be prejudiced by the relief requested herein, and the establishment of such notice procedures is in the best interest of the liquidation estate and will benefit the creditors of Noble Trust.

WHEREFORE, the Liquidator requests that the Court enter an order, in substantially the form attached hereto as Exhibit B, (a) finding that the foregoing notice procedures and the form of the notice comply with the applicable standards of due process of law, and provide adequate and sufficient notice to all interested persons of both the hearing on the approval of the Plan and the Claims Procedures Motion and the deadline for filing objections thereto; (b) authorizing and directing the Liquidator to implement the notice procedures; (c) setting September 10, 2014 at 4:00 p.m. as the deadline for the filing and service of any objections to the Plan and Claims Procedures Motion; (d) scheduling a hearing on the approval of the Plan and approval of the Claims Procedures Motion on October 7, 2014; and (e) granting the Liquidator such other and further relief as is just.

Respectfully submitted,

Dated: July 25, 2014

GLENN A. PERLOW, BANK COMMISSIONER OF THE
STATE OF NEW HAMPSHIRE,
AS LIQUIDATOR OF NOBLE TRUST COMPANY

By his attorneys,

ANN M. RICE,
DEPUTY ATTORNEY GENERAL

 by CMC w/ permission

Peter C.L. Roth (NH Bar 14395)
Senior Assistant Attorney General
NEW HAMPSHIRE DEPARTMENT OF JUSTICE
33 Capitol Street
Concord, N.H. 03301-6397
(603) 271-3679

-and-

SHEEHAN PHINNEY BASS + GREEN
PROFESSIONAL ASSOCIATION



Christopher M. Candon (NH Bar 21243)
1000 Elm Street, P.O. Box 3701
Manchester, NH 03105-3701
(603) 627-8168

EXHIBIT A

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 08-E-0053

**In the Matter of the Liquidation of
Noble Trust Company**

NOTICE OF HEARING

PLEASE TAKE NOTICE that on _____, 2014 at _____, prevailing Eastern time, or as soon thereafter as counsel may be heard, a hearing will be held at the Merrimack County Superior Court, 163 North Main Street, Concord, New Hampshire, 03302, to consider approval of the Liquidator's Plan of Liquidation (the "Plan") and approval of the Liquidator's Motion for Approval of Claims Resolution Procedures (the "Claims Procedures Motion") filed by the Liquidator of Noble Trust Company (the "Liquidator"), copies of the Plan and Claims Procedures Motion are available for review during regular office hours at the Office of the Clerk of the Court, or may be obtained upon request of The Office of Noble Liquidation, Attn: Abigail Shaine (Tel.: (603) 625-6733), or viewed on the New Hampshire Banking Department's web site (www.nh.gov/banking/noble-trust/). The hearing may be adjourned from time to time by announcement in open Court at the first scheduled hearing or at adjourned hearings without further written notice to parties in interest. The hearing will be a non-evidentiary hearing and no prehearing discovery will be afforded.

PLEASE TAKE FURTHER NOTICE that objections to the Plan and Claims Procedures Motion, if any, must be filed with the Clerk of Court at the above address, and served upon: (i) counsel for the Liquidator at their respective addresses shown below and (ii) all other counsel of record (whose names and addresses may be obtained from the Office of the Clerk), so as to be actually received by all such parties on or before September 10, 2014 at 4:00 p.m., prevailing Eastern time; *i.e.* any objections filed with the Clerk of the Court must also be either hand delivered to counsel or, if served by mail, then also transmitted electronically to counsel that same day.

Christopher M. Candon
Sheehan Phinney Bass + Green, PA
P.O. Box 3701
Manchester, NH 03105-3701
ccandon@sheehan.com
Fax: (603) 641-8768

Peter C.L. Roth
Senior Asst. Attorney General
Office of the Attorney General
33 Capitol Street
Concord, NH 03301-6397
peter.roth@doj.nh.gov
Fax: (603) 223-6269

PLEASE TAKE FURTHER NOTICE that any objections not filed and served in accordance with this notice shall not be considered.

Dated: _____, 2014

EXHIBIT B

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 08-E-0053

**In the Matter of the Liquidation of
Noble Trust Company**

**ORDER APPROVING NOTICE AND OBJECTION
PROCEDURES FOR HEARING ON APPROVAL OF
LIQUIDATOR'S PLAN OF LIQUIDATION AND
APPROVAL OF CLAIMS PROCEDURES MOTION**

Upon consideration of the Liquidator's Consented-To Motion to Approve Notice and Objection Procedures for Hearing on Approval of Liquidator's Plan of Liquidation and Approval of Claims Procedures Motion (the "Procedures Motion"), pursuant to which Glenn A. Perlow, Bank Commissioner for the State of New Hampshire, in his capacity as Liquidator of Noble Trust Company (the "Liquidator" and "Noble Trust," respectively), seeks an order of this Court: (1) approving the method, manner and form of notice, to be given of the hearing to consider approval of the Liquidator's Plan of Liquidation (the "Plan") and approval of the Liquidator's Motion for Approval of Claims Resolution Procedures (the "Claims Procedures Motion") that the Liquidator intends to file on or before August 7, 2014; (2) scheduling a hearing on the proposed Plan and Claims Procedures Motion; and (3) establishing a deadline by which any objections to the Plan and Claims Procedures Motion must be filed and served; adequate notice of the Procedures Motion having been provided; the notice procedures described in the Procedures Motion comply in all respects with the applicable notice requirements of New Hampshire law, and are sufficient to provide adequate notice of the Plan and Claims Procedures Motion, the hearing on the Plan and Claims Procedures Motion, and the deadline for filing

objections thereto; there being no objections made to the relief requested; and, after due deliberation and sufficient cause appearing therefor; it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Procedures Motion is granted, and all notice and objection procedures set forth therein are approved.
2. The Notice of Hearing in the form substantially attached to the Procedures Motion is approved.¹
3. Notice of the Plan and Claims Procedures Motion in the manner set forth in the Procedures Motion, *i.e.*, physical mailing, posting of the Plan, the Claims Resolution Procedure, the Memorandum, the Fleury Affidavit and any other affidavits in support of the Plan and Claims Resolution Procedure on the Banking Department's website, and availability of the pleadings at the Court or by request of the Liquidator, complies with applicable standards of due process of law, and provides adequate and sufficient notice to all parties in interest of the Plan and Claims Procedures Motion, the hearing on the Plan and Claims Procedures Motion, the issues to be decided at the hearing, and the deadline for filing objections.
4. Service shall be complete when the Liquidator makes a certificate of service to the Court certifying that he has complied with the approved notice procedures.
5. On _____, 2014 at __:__.m., a hearing will be held before the Court to consider approval of the Plan and approval of the Claims Procedures Motion.
6. Any objections to the Plan and Claims Procedures Motion must be filed by 4:00 p.m. (prevailing Eastern Time) on _____, 2014 (the "Objection Deadline") with the Office of the Clerk, Merrimack County Superior Court, 163 North Main Street, Concord, New

¹ Capitalized terms used in this Order and not otherwise defined herein are intended to have the same meaning as ascribed to them in the Procedures Motion.

Hampshire 03302, and also served so as to be received by the Objection Deadline on (a) counsel to the Liquidator and (b) upon all other counsel of record (whose names and addresses may be obtained from the Clerk's Office). **Any objections not filed and served in accordance with this Order shall not be considered.**

Dated: _____, 2014

Hon. Larry M. Smukler

CERTIFICATE OF SERVICE

I, Christopher M. Candon, hereby certify that on July 25, 2014, a copy of the foregoing pleading was served by first class mail, postage prepaid on the parties listed below.

Stephen A. Serfass, Esq.
Drinker Biddle & Reath LLP
One Logan Square, Ste. 2000
Philadelphia, PA 19103

David D. Cowan, CPA
920 Laguardia Dr., NE
Albuquerque, NM 87108

Thomas F.A. Hetherington, Esquire
Edison McDowell & Hetherington,
LLP
Phoenix Tower
3200 Southwest Freeway, Suite 2920
Houston, TX 77027

John M. Sullivan, Esquire
Preti Flaherty Beliveau & Pachios LLP
PO Box 1318
Concord, NH 03302-1318

Bertrand A. Zalinsky, Esquire
Cronin & Bisson, P.C.
722 Chestnut Street
Manchester, NH 03104

Nathan R. Lander, Esquire
Proskauer Rose LLP
Eleven Times Square
(Eighth Avenue & 41st Street)
New York, NY 10036-8299


J. Christopher Marshall, Asst. Attorney General
NH Office of Attorney General
33 Capitol Street
Concord, NH 03301

Steven A. Solomon, Esquire
D'Amante Couser Pellerin & Associates PA
Nine Triangle Park Drive
Concord, NH 03301

Russell F. Hilliard, Esquire
Justin Richardson, Esquire
Upton & Hatfield, LLP
159 Middle Street
Portsmouth, NH 03801

James F. Laboe, Esquire
Orr & Reno, P.A.
PO Box 3550
Concord, NH 03302-3550

Steven J. Lauwers, Esquire
Michael S. Lewis, Esquire
Rath Young and Pignatelli, P.C.
One Capital Plaza
Concord, NH 03302-1500


Christopher M. Candon